

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

COMPLAINT OF GAMEFLY, INC.

Docket No. C2009-1R

COMPETITIVE PRODUCT LIST  
ADDING ROUND-TRIP MAILER

Docket No. MC2013-57

COMPETITIVE PRODUCT LIST  
ADDING ROUND-TRIP MAILER (MC2013-57)

Docket No. CP2013-75

**RESPONSE TO ORDER NO. 1794 AND NOTICE OF FILING OF  
NONPUBLIC LIBRARY REFERENCE USPS-MC2013-57/NP1**

(August 5, 2013)

On July 26, 2013, the Postal Service filed a request to create a new competitive product, tentatively called "Round-Trip Mailer," to replace existing market dominant options for round-trip DVD mail (Request).<sup>1</sup> In Order No. 1794, the Postal Regulatory Commission directed the Postal Service to submit:

1) sufficient revenue and cost data for the 12-month period following the effective date of the proposed rates to demonstrate that the proposed Round-Trip Mailer product will be in compliance with 39 U.S.C. 3633(a)(2); and 2) a certified statement by a representative of the Postal Service attesting to the accuracy of the data submitted, and explaining why, following the effective date of the proposed rates, competitive products in total will be in compliance with 39 U.S.C. 3633(a)(1) and (3).<sup>2</sup>

The Commission requested that this information be filed no later than August 5, 2013.<sup>3</sup>

<sup>1</sup> Docket No. C2009-1R, Request of the United States Postal Service Under Section 3642 to Create Round-Trip Mailer Product (July 26, 2013).

<sup>2</sup> Order No. 1794, Notice and Order on Request to Add Round-Trip Mailer Product to the Competitive Product List (July 30, 2013).

<sup>3</sup> *Id.* at 3.

In compliance with the Commission's directive, the Postal Service is filing the requested information as a Category 4 nonpublic library reference in Docket No. MC2013-57:

**USPS-MC2013-57/NP1    Nonpublic Material Provided in Response to  
Commission Order No. 1794**

The library reference contains two Excel workbooks containing revenue and cost data for the 12-month period following the effective date of the proposed rates. These workbooks demonstrate that the proposed Round-Trip Mailer product will more than cover its attributable costs. However, the analysis contained therein is commercially sensitive, as it is based on volume/revenue data for Netflix® and GameFly®.<sup>4</sup> Consequently, an application for nonpublic treatment is included as Attachment A. In addition, a certified statement by a representative of the Postal Service is included as Attachment B.

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<sup>4</sup> Since mailers are not required to identify whether their First-Class Mail pieces contain DVDs, the Postal Service was not able to collect precise revenue/volume information for all round-trip DVD mailers. Consequently, the Postal Service based the financial analysis contained in USPS-MC2013-57/NP1 on the most precise data available, that of Netflix and GameFly. Given that, together, these two mailers represent an overwhelming majority of round-trip DVD mail, the Postal Service is confident that its cost coverage estimates accurately represent the Round-Trip Mailer product's ability to cover its costs. However, given the importance of Netflix's volume and revenue to the success of the Round-Trip Mailer product, and given that an equalized rate remedy cannot be effective without Netflix's use of the Round-Trip Mail product, the Postal Service believes that Netflix should be required to mail its DVDs at the new round-trip DVD rate. GameFly made a similar observation on page 14 of its Response to USPS Motion for Reconsideration and Clarification of Order No. 1794, filed on August 1, 2013. Accordingly, the Postal Service will draft conforming changes to the Domestic Mail Manual to ensure that all round-trip DVD mailers are required to utilize the new competitive product. Should the Commission find it necessary, the Postal Service would also support additional changes to the Mail Classification Schedule.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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August 5, 2013

**APPLICATION FOR NONPUBLIC TREATMENT  
OF LIBRARY REFERENCE USPS-MC2013-57/NP1**

In accordance with 39 C.F.R. § 3007.21 and Order No. 225, the United States Postal Service hereby applies for nonpublic treatment of data filed under seal with the Commission as USPS-R2013-6/NP1. This material, which has been prepared in response to Commission Order No. 1794, contains FY12 volume and revenue information for both Netflix® and GameFly®. It would be impossible to create a redacted version of the workbook without redacting every substantive cell of the workbook.

By operation of 39 U.S.C. § 410(c)(2), information of a commercial nature, which under good business practice would not be publicly disclosed, is not required to be disclosed to the public. The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). Because the information covered by this application falls within the scope of information not required to be disclosed publicly, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their nonpublic treatment.

**(1) The rationale for claiming that the materials are nonpublic, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);**

The workbooks contained in USPS-MC2013-57/NP1 contain commercial information, and under good business practice it would not be publicly disclosed. Therefore, it should be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).<sup>5</sup> The Postal Service believes that no mailer or mail service provider would assent to the very specific customer data contained in USPS-MC2013-57/NP1 being publicly disclosed, and the Postal Service believes that no commercial enterprise would disclose such information regarding its customers.

**(2) Identification, including name, phone number, and email address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;**

The Postal Service gives notice that it will inform the customers, in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The Postal Service employee responsible for providing notice to the third parties with proprietary interest in the materials filed in this docket is John F. Rosato, Attorney, 475 L'Enfant Plaza SW, Washington, D.C. 20260-1137, whose email address is [John.F.Rosato@usps.gov](mailto:John.F.Rosato@usps.gov) and whose telephone number is 202-268-8597.

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<sup>5</sup> In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1 (Mar. 20, 2009), at 11.

**(3) A description of the materials claimed to be nonpublic in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are nonpublic;**

The workbooks contained in USPS-MC2013-57/NP1 are based on FY 12 volumes and revenues for Netflix and GameFly.

**(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;**

If the information contained in USPS-MC2013-57/NP1 were to be disclosed publicly, the Postal Service considers it quite likely that the parties that are identified would suffer commercial harm. For each mailer, competitor mailers could use the data to imitate their business, thus causing the mailer to lose revenue.

**(5) At least one specific hypothetical, illustrative example of each alleged harm; Identified harm:**

**Harm:** A mailer loses revenue to a competitor mailer.

**Hypothetical:** USPS-MC2013-57/NP1 is disclosed publicly. Mailer A's volumes and revenues are disclosed. Mailer B, a business in competition with Mailer A, obtains a copy of the unredacted version of the financial work papers. Mailer B analyzes the work papers to assess Mailer A's underlying shipping costs. Mailer B uses that information as a baseline to undercut Mailer A's prices.

**(6) The extent of protection from public disclosure deemed to be necessary;**

The Postal Service maintains that the materials filed nonpublicly should be withheld from persons in the mailing industries, as well as their consultants and attorneys, and from any customers or potential customers of mailing industry participants.

**(7) The length of time deemed necessary for the nonpublic materials to be protected from public disclosure with justification thereof; and**

The Commission's regulations provide that nonpublic materials shall lose nonpublic status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

**(8) Any other factors or reasons relevant to support the application.**

None.

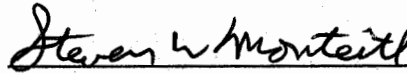
***Conclusion***

For the foregoing reasons, the Postal Service requests that the Postal Regulatory Commission grant its application for nonpublic treatment of USPS-MC2013-57/NP1.

**Certification of Cost and Revenue Figures in USPS-MC2013-57/NP1**

I, Steven W. Monteith, Manager, Transactions and Correspondence Mail, am familiar with the revenue and cost figures submitted as part of USPS-MC2013-57/NP1. The information contained therein is being filed in response to Commission Order No. 1794. In that order the Commission provided notice of the Postal Service's proposal to create a new competitive "Round-Trip Mailer" product and directed the Postal Service to provide additional information concerning the product's compliance with 39 U.S.C. 3633(a)(1) and (3).

I hereby certify, based on the financial analysis provided in USPS-MC2013-57/NP1, that the proposed Round-Trip Mailer product is in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). As demonstrated in the above mentioned library reference, the Round-Trip Mailer product is expected to cover its attributable costs. Consequently, there should be no subsidization of competitive products by market-dominant products. Similarly, the Round-Trip Mailer product should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

A handwritten signature in cursive script, reading "Steven W. Monteith", is written over a horizontal line.

Steven W. Monteith